

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 97 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHASHUBHAI @ SHAHIKANT

GOKALBHAI VAGHARI @ TALPADA

Versus

STATE OF GUJARAT

Appearance:

MR MC BAROT for Petitioner

MR ND GOHIL APP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the order of preventive detention dated 24th August, 1999, made against him by the District Magistrate, Kheda, under the powers

conferred upon him under section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

Along with the order of detention, the petitioner was supplied the grounds of detention as well and the supporting materials. It appears that some 7 prohibition offences are registered against the petitioner and are pending trial. In each of the said cases, large quantity of country liquor was recovered from the possession of the petitioner, and in some of the said cases, the petitioner was also found to be in possession of the liquor wash and the paraphernalia for manufacturing the country liquor. The petitioner is, therefore, held to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of law and order as envisaged under section 3 (4) of the Act and Explanation thereto. Some five persons have given statements in respect of incidents in which the petitioner is alleged to have issued threats to the innocent people, whereby the public tranquility and the even tempo of life in the area was disturbed. The petitioner is also alleged to have wielded lethal weapons at the people. The petitioner's activities are, therefore, found to be prejudicial to the maintenance of public order. The identity of the witnesses have been withheld under the powers conferred by section 9 (2) of the Act. It is recorded that the said persons had expressed fear of retaliation by the petitioner and had given statements on assurance of anonymity. It is, therefore, held that the disclosure of the identity of those persons would not be in the interest of public.

It is contended that the subjective satisfaction recorded by the Detaining Authority in respect of exercise of privilege under section 9 (2) of the Act is vitiated since the Detaining Authority has failed to verify genuineness of the statements made by the said persons or the apprehension voiced by them. Further two of the said persons did not even appear before the concerned authority for verification of their statements. Without ascertaining the genuineness of the statements given by the witnesses, the same could not have been relied upon. In any view of the matter, the identity of those witnesses could not have been withheld from the petitioner. The petitioner's right to representation has thus been seriously prejudiced.

On perusal of the grounds of detention, it is apparent that the Detaining Authority had entrusted the

task of verification of the statements of the witnesses to the Sub Divisional Magistrate, who in turn, had examined only three of the witnesses and had opined that their statements and the apprehension voiced by them were genuine. However, two of the witnesses did not appear before the Sub Divisional Magistrate for verification of their statements. The said statements have thus not been verified at all. In absence of the verification of the genuineness of the statements given by the witnesses, the subjective satisfaction recorded by the Detaining Authority is vitiated in as much as the said satisfaction is not supported by the materials on record. The exercise of powers under section 9 (2) of the Act in respect of those two witnesses was unwarranted and the order of detention stands vitiated. The continued detention of the petitioner is, therefore, null and void.

In the result, the petition is allowed. The impugned order dated 24th August, 1999, is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

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JOSHI